

000161

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE)50
9/25

N/A

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

City Attorney

3. DATE:
March 23, 2007

4. SUBJECT:

Tobacco-Retailer-Ordinance--Version-D

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Linda Peter, 533-6292, MS 59

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Anna Lonergan, 533-5838, MS 59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					An Ordinance amending the SDMC by adding a section relating to requirements for a police permit for tobacco product sales. Permit fee allows for full cost recovery. See attached Report to Council for details.
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Karen Hummer</i>	4/5/07	8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY	<i>Linda Peter</i>	4/5/07
4	LIAISON OFFICE			11	ORIG. DEPT	<i>Karen Hummer</i>	4/5/07
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
6				<input checked="" type="checkbox"/>	COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
7					REFER TO: _____	COUNCIL DATE: 7/10/07	

11. PREPARATION OF:

☐ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

An Ordinance amending the San Diego Municipal Code by adding Sections 33.4501 to 33.4518, titled "Permits for Tobacco Products Sales," relating to requirements for a police permit for tobacco product sales. Permit fee allows for cost recovery of administration and enforcement costs associated with the Ordinance.

11A. STAFF RECOMMENDATIONS:

Adopt the Ordinance.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL DISTRICTS.COMMUNITY AREA(S): COMMUNITIES CITY WIDE.

ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A PROJECT AND, THEREFORE, IS EXEMPT FROM CEQA PURSUANT TO STATE CEQA GUIDELINES, SECTION 15060 (c) (3).

HOUSING IMPACT: N/AOTHER ISSUES: N/A

EXECUTIVE SUMMARY SHEET

DATE ISSUED: March 23, 2007

REPORT NO.:

ATTENTION:

SUBJECT: Tobacco Retailer Ordinance – Version D

REFERENCE:

REQUESTED ACTION: Adopt the Ordinance amending the San Diego Municipal Code by adding Sections 33.4501 to 33.4518, titled “Permits for Tobacco Products Sales,” relating to requirements for police permits for tobacco product sales.

STAFF RECOMMENDATION: Adopt the Ordinance.

SUMMARY: Tobacco use by minors is a public health and safety risk. State laws are insufficient to address tobacco use by minors, and state law authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law. The proposed ordinance provides for local regulation of tobacco retail businesses by requiring police permits. The proposed ordinance will discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors.

FISCAL CONSIDERATIONS: A proposed permit fee of \$163 allows for full cost recovery of administration and enforcement costs related to this ordinance in the first year. Costs will be reviewed annually, and the permit fee will be adjusted, as necessary, to reflect true costs. Costs will be included in the Police Department’s fiscal year appropriation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: In April 2005, the Committee on Public Safety and Neighborhood Services was presented with two versions of a Tobacco Retailer Ordinance, 0-2005-65-DRAFT and O-2005-65-DRAFT-Version B. Neither version passed Committee. In July 2006, Version C was presented to the Committee. Version C received enough votes to move forward without recommendation, pending resolution and clarification of several issues. Those issues are addressed in Version D.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: American Lung Association; California Grocers Association; San Diego small business owners

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): Local retailers will be required to obtain police permits to sell tobacco products.

City Attorney’s Office

Michael J. Aguirre

Originating Department

City Attorney

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
45, SECTIONS 33.4501 TO 33.4518, TITLED "PERMITS FOR
TOBACCO PRODUCT SALES," RELATING TO
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT
SALES

This ordinance amends the Municipal Code by adding Division 45, Sections 33.4501 to 33.4518, relating to requirements for permits for tobacco product sales. State Assembly Bill 71, codified in California Business and Professions Code section 22971.3, created a state licensing program for the sale of tobacco products, and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law.

This ordinance provides for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written copy was made available to the City Council and the public prior to the day of passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final

passage.

A complete copy of the ordinance is available for inspection in the Office of the City

Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San

Diego, CA 92101.

LLP

03/23/07

Or.Dept:CA

O-2007-128

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
45, SECTIONS 33.4501 TO 33.4518, TITLED "PERMITS FOR
TOBACCO PRODUCT SALES," RELATING TO
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT
SALES

WHEREAS, according to the National Institutes of Health, minors face social, psychological, and educational challenges, exposing them to various risk factors for drug abuse, including the underage use of legal drugs like tobacco; and

WHEREAS, minors who use tobacco products face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation, and if such use is curtailed, then minors are likely to not use tobacco at all; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code

section 22956) and provides procedures for onsite sting inspections of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a 2004 purchase survey by the American Lung Association of San Diego and Imperial Counties showed that 43.6 percent of 264 stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting the sale of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, state law (Health and Safety Code section 11364.7) authorizes revocation of a business license if a person possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, (Business and Professions Code section 22971.3) created a state licensing program for the sale of tobacco

products and authorizes local governments to adopt their own ordinances to provide for the
suspension or revocation of a local license for any violation of a state tobacco control law;

WHEREAS, the City Council of the City of San Diego finds and declares that the
purpose of the ordinance is:

- (1) To regulate tobacco retail businesses by requiring police permits; and
- (2) To discourage violations of law which prohibit or discourage the sale or
distribution of tobacco products to minors; and
- (3) To protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is
hereby amended by adding Division 45, Sections 33.4501 through 33.4518, titled
“Permits for Tobacco Product Sales,” to read as follows:

§33.4501 Purpose and Intent

It is the purpose and intent of this Division to provide for local regulation
of tobacco retail businesses by requiring police permits. The intent is to
discourage violations of law prohibiting the sale or distribution of tobacco
products to minors to protect their health, welfare, and safety. It is also the
intent that all costs associated with the administration and enforcement of
this Division be borne by tobacco retailer applicants and permittees.

§33.4502 Definitions

Except as otherwise provided, for purposes of this Division:

“*Person*” has the same meaning as used in Section 11.0210.

"*Police permit*" has the same meaning as used in Municipal Code section

33.0201. For purposes of this Division, the City Treasurer may endorse a business tax certificate with "*Tobacco Retailer Endorsement*" indicating a *police permit* to operate as a *tobacco retailer* has been issued.

"*Tobacco products*" means any substance containing tobacco leaf, including, but not limited to, cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, *tobacco products* or tobacco paraphernalia.

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

§ 33.4503 Police Permit Required for Tobacco Retailer

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* at that location.
- (c) A *tobacco retailer* shall obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.

- (d) No *police permit* shall be issued for any *person* operating as a

tobacco retailer at any location other than a fixed location.

- (e) This section does not apply to sales or exchanges not made to the public.

§33.4504 Enforcement Authority

- (a) The administration and enforcement of this Division shall be divided between the City Treasurer and the *Chief of Police*. Subject to approval from the *Chief of Police*, the City Treasurer shall be responsible for accepting applications for a *police permit* to operate as a *tobacco retailer*, and for issuing the permit by endorsing the applicant's business tax certificate to indicate that a *police permit* has been issued authorizing the *permittee* to operate a *tobacco retailing* business. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division.
- (b) The City Treasurer shall accept an application to operate as a *tobacco retailer* and, subject to approval from the *Chief of Police*, endorse a *tobacco retailer's* business tax certificate with "*Tobacco Retailer Endorsement*," indicating a *police permit* to operate as a *tobacco retailer* has been issued.

- (c) Any information provided to or gathered by the City Treasurer

under this Division shall also be shared with and made available to

the *Chief of Police*.

§33.4505 Tobacco Retailer Permit Application Contents

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
- (1) The full true name and any other names ever used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) The address of the proposed *tobacco retailer* business location.
 - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
 - (5) All fictitious business names ever used by applicant and the respective addresses of those businesses.
 - (6) Written proof that the applicant is at least eighteen years of age.
 - (7) A valid social security number.
 - (8) Applicant's height, weight, and color of eyes and hair.
 - (9) Photographs of the applicant as specified by the *Chief of Police*.

- (10) Applicant's business, occupation, and employment history

for the five years immediately preceding the date of application, including addresses and dates of employment.

- (11) Whether the applicant has ever had any *license* or *permit* issued by any agency or board, or any city, county, state or federal agency suspended or revoked, or has had any professional or vocational *license* or *permit* suspended or revoked within five years immediately preceding the application, and the reason for the suspension or revocation.

- (12) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.

- (13) The name and address of the current owner and lessor of the real property upon which the proposed *tobacco retailing* business is to be conducted, and a copy of the lease or rental agreement.

- (14) All business tax certificates.

- (15) Information regarding *licenses* required under the "Cigarette and Tobacco Products Licensing Act of 2003," found in Business and Professions Code sections 22970, et seq., including, but not limited to, copies of applications for

licenses, licenses issued, and any documentation regarding

the reasons for the denial of such license.

(16) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

(b) In addition to the information required by Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* shall furnish the following information to the City Treasurer:

- (1) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
- (2) If the applicant is a partnership, the name and residential address of each of the partners, including limited partners;
- (3) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

(4) If one or more of the limited partners is a corporation, the

applicant shall provide the information about that partner

required by Municipal Code section 33.4505(b)(1);

(5) If the applicant is a corporation or partnership, the name of the responsible managing officer.

(c) An applicant for a *police permit* to operate as a *tobacco retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in Municipal Code section 33.4510.

§33.4506 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *tobacco retailing* business is deemed an applicant and each shall provide the information required in Municipal Code section 33.4505.

§33.4507 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

**§33.4508 Proof of State Licenses, Permits, and Certifications Required Before
Issuance of Tobacco Retailer Permit**

In addition to the requirements of Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer copies of all state *licenses, permits*, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* business.

§33.4509 Investigation Prior to Issuance of Tobacco Retailer Permit

- (a) The *Chief of Police*, or other designated official, shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*. The *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.

§33.4510 Grounds for Denial of Tobacco Retailer Permit

In addition to the grounds for denial stated in Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced

administrative action against any type of *license* for violations of any

tobacco control law, including, but not limited to, the following offenses:

Penal Code section 308, Business and Professions Code sections 22950, et seq. ("Stop Tobacco Access to Kids Enforcement Act" or the "STAKE Act"), Business and Professions Code sections 22970, et seq. ("Cigarette and Tobacco Products Licensing Act of 2003"), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

§33.4511 Right to Appeal Denial of Tobacco Retailer Permit

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

§33.4512 Permit Fees

- (a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit* applications, processing *permit* applications, inspecting, regulating, and enforcing this Division, and providing for appeals, shall be borne by applicants and *permittees*. The Mayor shall assess a fee for a *police permit* to operate as a *tobacco retailer* according to the schedule set in the City Clerk's Composite Rate Book. Fees will be reviewed annually.
- (b) A *permit* issued under this Division shall be valid for a period of one year from the date of issuance.

§33.4513 Tobacco Retailer Operating Requirements

-
- (a) *A tobacco retailer shall keep and post his or her police permit,* issued under this Division, in the manner prescribed in Municipal Code sections 33.0105(a) and (c). This subsection is regulatory only.
- (b) *Tobacco retailers shall not allow, at any location for which they have a police permit to operate as a tobacco retailer, a violation of any tobacco control law including, but not limited to, the offenses listed in Municipal Code section 33.4510. Tobacco retailers shall be responsible for the acts of others who violate tobacco control laws at any location for which the tobacco retailer possesses a police permit to operate as a tobacco retailer. This subsection is regulatory only.*
- (c) *A tobacco retailer shall display in a conspicuous and prominent location near tobacco products, information, in a manner established by the Chief of Police, on how to report violations of tobacco control laws including, but not limited to, reporting sales of tobacco products to minors, to the Chief of Police.*
- (d) *Clerks who transact tobacco products sales in tobacco retailer establishments shall themselves be the minimum legal age to purchase tobacco products (currently 18 years of age). This subsection is regulatory only.*

- (e) *Tobacco retailers* shall check the age of purchasers of *tobacco*

products who reasonably appear to be under the age of 27. This

subsection is regulatory only.

§33.4514 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this Division is suspended or revoked, the *permittee* shall post, consistent with section 33.4513(a), written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer endorsement*.
- (c) If a *police permit* issued under this Division is suspended or revoked, all *tobacco products* and tobacco paraphernalia shall be removed from public view for the duration of the suspension or revocation.

§33.4515 Additional Penalties

Pursuant to Health and Safety Code section 11364.7, a business license shall be revoked if a *person* possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

§33.4516 Tobacco Retailer Permit Not Transferable

A police permit issued under this Division is not transferable.

§33.4517 Grandfather Clause

Notwithstanding Section 33.4510, *convictions* for offenses listed in Section 33.4510 shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of this Division.

§33.4518 Reporting

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Neighborhood Services Committee, report to the Public Safety and Neighborhood Services Committee the following information:

- (a) A summary of activity related to the administration and enforcement of this Division; and
- (b) An accounting of all funds received and used for the administration and enforcement of this Division; and
- (c) The estimated rate of illegal sales of *tobacco products* to minors within the City of San Diego.

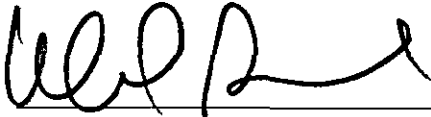
Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the one hundred and

~~eightieth day from and after its final passage.~~

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Michael J. Aguirre
City Attorney

LLP

03/23/07

Or.Dept:Police

O-2007-128

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

ORDINANCE NUMBER O-_____ (NEW SERIES)

~~DATE OF FINAL PASSAGE~~

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
45, SECTIONS 33.4501 TO 33.4519, TITLED "PERMITS FOR
TOBACCO PRODUCT SALES," RELATING TO
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT
SALES

WHEREAS, according to the National Institutes of Health, young people entering high school face social, psychological, and educational challenges, exposing them to various risk factors for drug abuse, including the underage use of legal drugs like tobacco; and

WHEREAS, minors who use tobacco products face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation, and if such use is curtailed, then minors are likely to not use tobacco at all; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code

section 22956) and provides procedures for onsite sting inspections of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a recent survey by the American Lung Association of San Diego and Imperial Counties carried out in San Diego County showed that as many as 43.9 percent of 244 stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting the sale of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California Courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, state law (Health and Safety Code section 11364.7) authorizes revocation of a business license if a person possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, (Business and Professions Code section 22971.3) created a state licensing program for the sale of tobacco

products and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law;

WHEREAS, the City Council of the City of San Diego finds and declares that the purpose of the ordinance is:

- (1) To regulate tobacco retail businesses by requiring police permits; and
- (2) To discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors; and
- (3) To protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is hereby amended by adding Division 45, Sections 33.4501 through 33.4519, titled "Permits for Tobacco Product Sales," to read as follows:

§33.4501 Purpose and Intent

It is the purpose and intent of this Division to provide for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

§33.4502 Definitions

Except as otherwise provided, for purposes of this Division:

"Person" has the same meaning as used in Section 11.0210.

"Police permit" has the same meaning as used in Municipal Code section 33.0201. For purposes of this Division, the City Treasurer may endorse a

business tax certificate with "*Tobacco Retailer Endorsement*" indicating a police permit to operate as a *tobacco retailer* has been issued.

"*Tobacco products*" means any substance containing tobacco leaf, including, but not limited to, cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. [Include "providing free of low cost tobacco products for business purposes" if you want to compel "bar nights" to obtain a permit to give away free samples.]

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

§ 33.4503 Police Permit Required for Tobacco Retailer

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* at that location.

- (c) A tobacco retailer must obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.

- (d) No *police permit* shall be issued for any person operating as a tobacco retailer at any location other than a fixed location.

- (e) This section does not apply to sales or exchanges not made to the public.

§33.4504 Enforcement Authority

- (a) The administration and enforcement of this Division shall be divided between the *Chief of Police* and the City Treasurer. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a tobacco retailer, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division. Subject to approval from the *Chief of Police*, the City Treasurer is responsible for accepting applications for a police permit to operate as a tobacco retailer, and for issuing the permit by endorsing the applicant's business tax certificate to indicate that a *police permit* has been issued authorizing the *permittee* to operate a tobacco retailing business.
- (b) The City Treasurer may accept an application to operate as a tobacco retailer and, subject to approval from the *Chief of Police*, endorse a tobacco retailer's business tax certificate with "Tobacco Retailer Endorsement," indicating a *police permit* to operate as a tobacco retailer has been issued.

- (c) Any information provided to or gathered by the City Treasurer under this Division shall also be shared with and made available to the *Chief of Police*.
-

§33.4505 Tobacco Retailer Permit Application Contents

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
- (1) The full true name and any other names ever used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) The address of the proposed *tobacco retailer* business location.
 - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
 - (5) All fictitious business names ever used by applicant and the respective addresses of those businesses.
 - (6) Written proof that the applicant is at least eighteen years of age.
 - (7) A valid social security number.
 - (8) Applicant's height, weight, and color of eyes and hair.
 - (9) Photographs of the applicant as specified by the *Chief of Police*.

- (10) Applicant's business, occupation, and employment history
for the five years immediately preceding the date of

application, including addresses and dates of employment.

- (11) Whether the applicant has ever had any *license* or *permit* issued by any agency or board, or any city, county, state or federal agency suspended or revoked, or has had any professional or vocational *license* or *permit* suspended or revoked within five years immediately preceding the application, and the reason for the suspension or revocation.
- (12) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.
- (13) The name and address of the current owner and lessor of the real property upon which the proposed *tobacco retailing* business is to be conducted, and a copy of the lease or rental agreement.
- (14) All business tax certificates.
- (15) Information regarding *licenses* required under the "Cigarette and Tobacco Products Licensing Act of 2003," found in Business and Professions Code sections 22970, et seq., including, but not limited to, copies of applications for

licenses, licenses issued, and any documentation regarding
the reasons for the denial of such *license*.

- (16) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.
- (b) In addition to the information required by Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* must furnish the following information to the City Treasurer:
 - (1) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
 - (2) If the applicant is a partnership, the name and residential address of each of the partners, including limited partners;
 - (3) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

(4) If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Municipal Code section 33.4505(b)(1);

(5) If the applicant is a corporation or partnership, the name of the responsible managing officer.

(6) A copy of the *tobacco retailer's state tobacco retailer license*. [NOTE: This makes sure that the retailer is in compliance with the state licensing law before issuing a local license.]

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(c) An applicant for a *police permit* to operate as a *tobacco retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in Municipal Code section 33.4510. It is unlawful to submit a false, untruthful, or misleading declaration.

§33.4506 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *tobacco retailing* business is deemed an applicant and each must provide the information required in Municipal Code section 33.4505.

§33.4507 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The

responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

§33.4508 Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer Permit

In addition to the requirements of Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer all state *licenses, permits*, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* business.

§33.4509 Investigation Prior to Issuance of Tobacco Retailer Permit

- (a) The *Chief of Police*, or other designated official, shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*. The *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.

§33.4510 Grounds for Denial of Tobacco Retailer Permit

In addition to the grounds for denial stated in Municipal Code section

33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco*

retailer shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced administrative action against any *type of license* for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. ("Stop Tobacco Access to Kids Enforcement Act" or the "STAKE Act"), Business and Professions Code sections 22970, et seq. ("Cigarette and Tobacco Products Licensing Act of 2003"), Business and Professions Code sections 17200, et seq. (Unlawful, Unfair or Fraudulent Business Act or Practice) premised on a violation of a tobacco related law, or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

§33.4511 Right to Appeal Denial of Tobacco Retailer Permit

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

§33.4512 Permit Fees

- (a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit*

applications, processing *permit* applications, inspecting,
regulating, and enforcing this Division, and providing for appeals,

shall be borne by applicants and *permittees*. The City Manager
may assess a fee for a *police permit* to operate as a *tobacco
retailer* according to the schedule set in the City Clerk's
Composite Rate Book.

- (b) A *permit* issued under this Division shall be valid for a period of
one year from the date of issuance.

§33.4513 Tobacco Retailer Operating Requirements

- (a) A *tobacco retailer* must keep and post his or her *police permit*,
issued under this Division, in the manner prescribed in Municipal
Code sections 33.0105(a) and (c). This subsection is regulatory
only.
- (b) *Tobacco retailers* shall not allow, at any location for which they
have a *police permit* to operate as a *tobacco retailer*, a violation of
any tobacco control law including, but not limited to, the offenses
listed in Municipal Code section 33.4510. *Tobacco retailers* shall
be responsible for the acts of others who violate tobacco control
laws at any location for which the *tobacco retailer* possesses a
police permit to operate as a *tobacco retailer*. This subsection is
regulatory only.
- (c) A *tobacco retailer* must display in a conspicuous and prominent
location near *tobacco products*, information, in a manner

established by the *Chief of Police*, on how to report violations of tobacco control laws including, but not limited to, reporting sales of tobacco products to minors, to the *Chief of Police*.

- (d) *A tobacco retailer may not provide a venue for smoking or consuming any tobacco product anywhere at the permitted location, either indoors or outdoors. [NOTE: This eliminates hookah bars.]*

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§33.4514 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this Division is suspended or revoked, the *permittee* must post, consistent with section 33.4513(a), written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer endorsement*.

§33.4515 Additional Penalties

Pursuant to Health and Safety Code section 11364.7, a business license may be revoked if a *person* possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

§33.4515 Civil Suit

(a) Notwithstanding any other provision of this Division or this Code,

the City Attorney or City Prosecutor [NOTE: define these in

definitions section?] may seek a civil injunction to enforce this

Division or to prohibit a violation of a *police permit* or may bring a

civil suit under Business and Professions Code sections 17200, et

seq. (unlawful, unfair or fraudulent business act or practice) for a

violation of this Division or a violation of a *police permit*. If the

City Attorney or City Prosecutor prevails, in addition to any other

remedies ordered by the court, any *police permit* at issue shall be

suspended for a minimum of: ten days for a first suspension in five

years; 30 days for a second suspension in five years; 120 days for a

third suspension in five years; and five years for a fourth

suspension in five years. The City Attorney and City Prosecutor

shall recoup any expenditure made to enforce this Division from

the permit fee proceeds and the permit fee shall be calculated to

include such reimbursements. [NOTE: This gives the city attorney

an express role in enforcement, to back up any strong talk to the

retailers.]

(b) Any violation of this Division or of a *police permit* is hereby

declared to be a public nuisance. [NOTE: This adds another

enforcement possibility: civil suit for nuisance abatement.]

[NOTE: I feel strongly that if the city knows the police will not have
the manpower to enforce compliance with the permit requirements,
alternative enforcement mechanisms should be included.]

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§33.4516 Tobacco Retailer Permit Not Transferable

A police permit issued under this Division is not transferable.

§33.4517 Grandfather Clause

Convictions for offenses listed in Section 33.4510 shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of this Division.

§33.4518 Reporting

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Neighborhood Services Committee, report to the Public Safety and Neighborhood Services Committee the following information:

- (a) A summary of activity related to the administration and enforcement of this Division; and
- (b) An accounting of all funds received and used for the administration and enforcement of this Division; and
- (c) The estimated rate of illegal sales of *tobacco products* to minors within the City of San Diego.

§33.4519 Sunset Clause

This Division shall be repealed five years from and after the final passage of this Division, unless this section is repealed.

000198

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the one hundred and eightieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Linda L. Peter
Deputy City Attorney

LLP
06/27/06
Or.Dept:Police
O-2006-161

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____

000199

(date)

JERRY SANDERS, Mayor

Vetoed:

(date)

JERRY SANDERS, Mayor

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
45, SECTIONS 33.4501 TO 33.4519, TITLED "PERMITS FOR
TOBACCO PRODUCT SALES," RELATING TO
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT
SALES

WHEREAS, according to the National Institutes of Health, young people entering high school face social, psychological, and educational challenges, exposing them to various risk factors for drug abuse, including the underage use of legal drugs like tobacco; and

WHEREAS, minors who use tobacco products face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation, and if such use is curtailed, then minors are likely to not use tobacco at all; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code

section 22956) and provides procedures for onsite sting inspections of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a 2004 purchase survey by the American Lung Association of San Diego and Imperial Counties showed that 43.6 percent of 264 stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting the sale of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California Courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, state law (Health and Safety Code section 11364.7) authorizes revocation of a business license if a person possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, (Business and Professions Code section 22971.3) created a state licensing program for the sale of tobacco

products and authorizes local governments to adopt their own ordinances to provide for the

~~suspension or revocation of a local license for any violation of a state tobacco control law;~~

WHEREAS, the City Council of the City of San Diego finds and declares that the purpose of the ordinance is:

- (1) To regulate tobacco retail businesses by requiring police permits; and
- (2) To discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors; and
- (3) To protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is hereby amended by adding Division 45, Sections 33.4501 through 33.4519, titled "Permits for Tobacco Product Sales," to read as follows:

§33.4501 Purpose and Intent

It is the purpose and intent of this Division to provide for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

§33.4502 Definitions

Except as otherwise provided, for purposes of this Division:

"Person" has the same meaning as used in Section 11.0210.

"*Police permit*" has the same meaning as used in Municipal Code section

33.0201. For purposes of this Division, the City Treasurer may endorse a business tax certificate with "*Tobacco Retailer Endorsement*" indicating a police permit to operate as a *tobacco retailer* has been issued.

"*Tobacco products*" means any substance containing tobacco leaf, including, but not limited to, cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia.

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

§ 33.4503 Police Permit Required for Tobacco Retailer

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* at that location.
- (c) A *tobacco retailer* must obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.

- (d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* at any location other than a fixed location.
-

- (e) This section does not apply to sales or exchanges not made to the public.

§33.4504 Enforcement Authority

- (a) The administration and enforcement of this Division shall be divided between the *Chief of Police* and the City Treasurer. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division. Subject to approval from the *Chief of Police*, the City Treasurer is responsible for accepting applications for a *police permit* to operate as a *tobacco retailer*, and for issuing the permit by endorsing the applicant's business tax certificate to indicate that a *police permit* has been issued authorizing the *permittee* to operate a *tobacco retailing* business.
- (b) The City Treasurer may accept an application to operate as a *tobacco retailer* and, subject to approval from the *Chief of Police*, endorse a *tobacco retailer's* business tax certificate with "*Tobacco Retailer Endorsement*," indicating a *police permit* to operate as a *tobacco retailer* has been issued.

Any information provided to or gathered by the City Treasurer

under this Division shall also be shared with and made available to
the *Chief of Police*.

§33.4505 Tobacco Retailer Permit Application Contents

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
- (1) The full true name and any other names ever used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) The address of the proposed *tobacco retailer* business location.
 - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
 - (5) All fictitious business names ever used by applicant and the respective addresses of those businesses.
 - (6) Written proof that the applicant is at least eighteen years of age.
 - (7) A valid social security number.
 - (8) Applicant's height, weight, and color of eyes and hair.
 - (9) Photographs of the applicant as specified by the *Chief of Police*.

(10) Applicant's business, occupation, and employment history

for the five years immediately preceding the date of

application, including addresses and dates of employment.

(11) Whether the applicant has ever had any *license* or *permit*

issued by any agency or board, or any city, county, state or

federal agency suspended or revoked, or has had any

professional or vocational *license* or *permit* suspended or

revoked within five years immediately preceding the

application, and the reason for the suspension or

revocation.

(12) All criminal *convictions*, including those dismissed

pursuant to Penal Code section 1203.4, except traffic

infractions, and a statement of the dates and places of such

convictions.

(13) The name and address of the current owner and lessor of

the real property upon which the proposed *tobacco*

retailing business is to be conducted, and a copy of the

lease or rental agreement.

(14) All business tax certificates.

(15) Information regarding *licenses* required under the

"Cigarette and Tobacco Products Licensing Act of 2003,"

found in Business and Professions Code sections 22970, et

seq., including, but not limited to, copies of applications for

licenses, licenses issued, and any documentation regarding

the reasons for the denial of such license.

(16) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

(b) In addition to the information required by Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* must furnish the following information to the City Treasurer:

- (1) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
- (2) If the applicant is a partnership, the name and residential address of each of the partners, including limited partners;
- (3) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

- (4) If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Municipal Code section 33.4505(b)(1);
- (5) If the applicant is a corporation or partnership, the name of the responsible managing officer.
- (c) An applicant for a *police permit* to operate as a *tobacco retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in Municipal Code section 33.4510. It is unlawful to submit a false, untruthful, or misleading declaration.

§33.4506 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *tobacco retailing* business is deemed an applicant and each must provide the information required in Municipal Code section 33.4505.

§33.4507 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

**§33.4508 Proof of State Licenses, Permits, and Certifications Required Before
Issuance of Tobacco Retailer Permit**

In addition to the requirements of Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer all state *licenses, permits*, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* business.

§33.4509 Investigation Prior to Issuance of Tobacco Retailer Permit

- (a) The *Chief of Police*, or other designated official, shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*. The *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.

§33.4510 Grounds for Denial of Tobacco Retailer Permit

In addition to the grounds for denial stated in Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced

administrative action against any type of *license* for violations of any tobacco control law, including, but not limited to, the following offenses:

Penal Code section 308, Business and Professions Code sections 22950, et seq. ("Stop Tobacco Access to Kids Enforcement Act" or the "STAKE Act"), Business and Professions Code sections 22970, et seq. ("Cigarette and Tobacco Products Licensing Act of 2003"), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

§33.4511 Right to Appeal Denial of Tobacco Retailer Permit

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

§33.4512 Permit Fees

- (a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit* applications, processing *permit* applications, inspecting, regulating, and enforcing this Division, and providing for appeals, shall be borne by applicants and *permittees*. The City Manager may assess a fee for a *police permit* to operate as a *tobacco retailer* according to the schedule set in the City Clerk's Composite Rate Book.
- (b) A *permit* issued under this Division shall be valid for a period of one year from the date of issuance.

§33.4513 Tobacco Retailer Operating Requirements

-
- (a) ~~A tobacco retailer must keep and post his or her police permit,~~
issued under this Division, in the manner prescribed in Municipal
Code sections 33.0105(a) and (c). This subsection is regulatory
only.
- (b) Tobacco retailers shall not allow, at any location for which they
have a *police permit* to operate as a *tobacco retailer*, a violation of
any tobacco control law including, but not limited to, the offenses
listed in Municipal Code section 33.4510. Tobacco retailers shall
be responsible for the acts of others who violate tobacco control
laws at any location for which the *tobacco retailer* possesses a
police permit to operate as a *tobacco retailer*. This subsection is
regulatory only.
- (c) A tobacco retailer must display in a conspicuous and prominent
location near *tobacco products*, information, in a manner
established by the *Chief of Police*, on how to report violations of
tobacco control laws including, but not limited to, reporting sales
of *tobacco products* to minors, to the *Chief of Police*.

§33.4514 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued
to operate as a *tobacco retailer* shall be conducted as prescribed in
Municipal Code sections 33.0401 to 33.0406.

(b) If a *police permit* issued under this Division is suspended or

revoked, the *permittee* must post, consistent with section

33.4513(a), written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer* endorsement.

§33.4515 Additional Penalties

Pursuant to Health and Safety Code section 11364.7, a business license may be revoked if a *person* possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

§33.4516 Tobacco Retailer Permit Not Transferable

A *police permit* issued under this Division is not transferable.

§33.4517 Grandfather Clause

Convictions for offenses listed in Section 33.4510 shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of this Division.

§33.4518 Reporting

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Neighborhood Services Committee, report to the Public Safety and Neighborhood Services Committee the following information:

(a) A summary of activity related to the administration and enforcement of this Division; and

(b) An accounting of all funds received and used for the administration
and enforcement of this Division; and

(c) The estimated rate of illegal sales of *tobacco products* to minors
within the City of San Diego.

§33.4519 Sunset Clause

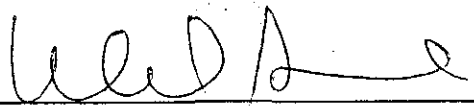
This Division shall be repealed five years from and after the final passage
of this Division, unless this section is repealed.

Section 2. That a full reading of this ordinance is dispensed with prior to its final
passage, a written or printed copy having been available to the City Council and the public a day
prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the one hundred and
eightieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Michael J. Aguirre
City Attorney

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CITY CLERKS OFFICE
SAN DIEGO, CA

LLP
06/27/06
Or.Dept:Police
O-2006-161

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I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

ORDINANCE NUMBER O (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
45, SECTIONS 33.4501 TO 33.4516, TITLED "PERMITS FOR
TOBACCO PRODUCT SALES," RELATING TO
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT
SALES

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation and, if such use is curtailed, then minors are likely not to use tobacco at all; and

WHEREAS, minors, who use tobacco products, face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code section 22956) and provides procedures for onsite sting inspection of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a recent survey by the American Lung Association of San Diego and

~~Imperial Counties carried out in San Diego County showed that as many as 43.9 percent of 244~~

stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting sales of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and finally, and most-importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California Courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, which created a state licensing program for the sale of tobacco products, permits local governments to create their own ordinances to discourage violations of the law; and

WHEREAS, the City Council of the City of San Diego finds and declares that the purpose of the ordinance is:

- (1) to discourage violations of law which prohibit or discourage sale or distribution of tobacco products to minors; and
- (2) to protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is hereby amended by adding Division 45, Sections 33.4501 through 33.4516, titled

"Permits for Tobacco Product Sales," to read as follows:

§33.4501 Definitions

Except as otherwise provided, for the purpose of this division:

"*Person*" has the same meaning as used in Section 11.0210.

"*Police permit*" has the same meaning as used in Municipal Code section 33.0201. For purposes of this Division, the City Treasurer may endorse a business tax certificate issued by the City Treasurer with "Tobacco Retailer Endorsement" to indicate that a police permit for has been issued to operate as a tobacco retailer.

"*Tobacco products*" means any substance containing tobacco leaf, including but not limited to cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia.

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

(a) It is unlawful for any *person* to operate as a *tobacco retailer*

without a police permit.

(b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a police permit to operate as a *tobacco retailer* at that location. This section does not apply to sales or exchanges not made to the public.

(c) A *tobacco retailer* must obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.

(d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* at any location other than a fixed location.

§33.4503

Responsibilities

(a) It is the intent of this division that the responsibilities of administration and enforcement be divided between the Police Department and the Treasurer, respectively. The Police Department shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division. The Treasurer is responsible for accepting applications, subject to approval from the Chief of Police, for a police permit to operate as a *tobacco retailer* and, subject to approval from the Chief of Police, for issuing the permit by endorsing the applicant's

business tax certificate to indicate that a *police permit* to operate as a tobacco retailer has been issued.

- (b) The City Treasurer may accept an application to operate as a *tobacco retailer* and, subject to approval from the Chief of Police, endorse a *tobacco retailer's* business tax certificate with "*Tobacco Retailer Endorsement*," indicating a *police permit* to operate as a *tobacco retailer* has been issued.
- (c) Any information provided to or gathered by the City Treasurer under this Division shall also be shared with and made available to the *Chief of Police*.

§33.4504 Tobacco Retailer Permit Application Contents

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
 - (1) The full true name and any other names used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) The address of the proposed *tobacco retailer* business location.
 - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
 - (5) All fictitious business names used by applicant and the respective addresses of those businesses.

- (6) Written proof that the applicant is at least eighteen years of age and a valid social security number.
-

- (7) Applicant's height, weight, color of eyes, and hair.
- (8) Photographs of the applicant as specified by the *Chief of Police*.
- (9) Applicant's business, occupation, and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.
- (10) Whether the applicant has ever had any license or permit issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any professional or vocational license or permit revoked or suspended within five years immediately preceding the application, and the reason for the suspension or revocation.
- (11) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.
- (12) The name and address of the owner and lessor of the real property upon which the business is to be conducted, and a copy of the lease or rental agreement.
- (13) All business tax certificates.

- (14) Information regarding licenses required under the

~~"Cigarette and Tobacco Products Licensing Act of 2003,"~~

found in Business and Professions Code sections 22970, et seq, including, but not limited to, copies of applications for, licenses issued, and any documentation regarding the reasons for the denial of such license.

- (15) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

- (b) In addition to the information required by Municipal Code section 33.4503(a), an applicant as a *tobacco retailer* must furnish the following information to the City Treasurer:

- (1) if the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
- (2) if the applicant is a partnership, the name and residential addresses of each of the partners, including limited partners;

- (3) if the applicant is a limited partnership, a copy of the
limited partnership's certificate of limited partnership as
filed with the County Clerk;
- (4) if one or more of the limited partners is a corporation, the
applicant shall provide the information about that partner
required by Municipal Code section 33.4503(a);
- (5) if the applicant is a corporation or partnership, the name of
the responsible managing officer.
- (c) An applicant for a *police permit* to operate as a *tobacco retailer*
shall submit a signed declaration certifying that he or she has not
been convicted of or faced administrative action based on
violations of the offenses listed in Municipal Code section
33.4507(c)(1). It shall be unlawful to submit a false, untruthful, or
misleading declaration.

§33.4505 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a business operating as a *tobacco retailer* is deemed an applicant and each must provide the information required in Municipal Code section 33.4503.

§33.4506 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer Business

In addition to the requirements of Municipal Code section 33.4503, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer all state licenses, permits, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location where the applicant will operate as a *tobacco retailer*.

§33.4508

Permit Issuance and Grounds for Denial Of Permit To Operate As a Tobacco Retailer

- (a) The *Chief of Police* shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*. The *Chief of Police* shall have authority to determine whether or not to grant a *police permit* or take administrative action against a *police permit* under this division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.
- (c) In addition to the grounds for denial stated in Municipal Code section 33.0306(a)-(f) an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons:

The applicant has within five years immediately preceding the date of the filing of the application been convicted of, suffered any civil penalty, or faced administrative action against any type of license for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. ("Stop Tobacco Access to Kids Enforcement Act or the STAKE Act"), Business and Professions Code sections 22970, et seq. ("Cigarette and Tobacco Products Licensing Act of 2003") or a charge of violating a lesser included or lesser related offense, including but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

§33.4509 Right to Appeal Denial of Permit To Operate As A Tobacco Retailer.

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

§33.4510 Permit Fees

- (a) It is the intent that all costs associated with all aspects of this division, including but not limited to, investigating permit applications, processing permit applications, inspecting, regulating, and enforcing this division, and providing for appeals, shall be borne by applicants and permittees. To this end, the City Manager may assess a fee for a *police permit* to operate as a

~~Composite-Rate-Book.~~

- (b) A permit issued under this division shall be valid solely for a period of one year from the date of issuance.

§33.4511 Tobacco Retailer Permit Operating Requirements

- (a) A *tobacco retailer* must keep and post his or her *police permit*, issued under this division, in the manner prescribed in Municipal Code sections 33.0105(a) and (c). This section is regulatory only.
- (b) Persons who possess a *police permit* to operate as a *tobacco retailer* shall not allow or permit, at any location for which they have a *police permit* to operate as a *tobacco retailer*, a violation of any tobacco control law, including but not limited to, the offenses listed in Municipal Code section 33.4507(c)(1). Given the need to protect the health and welfare of minors and the public, it is the intent of this section to hold the *tobacco retailer* responsible for the acts of others who violate *tobacco* control laws at locations for which the *tobacco retailer* possesses a *police permit* to operate as a *tobacco retailer*. This section is regulatory only.
- (c) A *tobacco retailer* must display in a conspicuous and prominent location near *tobacco* products, information, in a manner set by the San Diego Police Department, on how to report violations of *tobacco* control laws, including, but not limited to reporting sales

of *tobacco products* to minors to the San Diego Police

Department.

§33.4512 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this division is suspended or revoked, the permittee must post, consistent with section 33.4509, written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer* endorsement.

§33.4513 Tobacco Retailer Police Permit Not Transferable

A *police permit* issued under this division is not transferable.

§33.4514 Grandfather Clause

Convictions for offenses listed in Section 33.4507(c)(1) shall not be used to deny an application for a *police permit* under this division if the date of the conviction was prior to the passage of this division.

§33.4515 Sunset Clause

This division shall be repealed five years from and after the passage of this division, unless this section is repealed.

§33.4516 Reporting

The San Diego Police Department shall, on a yearly basis or as requested by the Public Safety and Neighborhood Services Committee, report to the

Public Safety and Neighborhood Services Committee the following
information:

- (a) A summary of activity related to the administration and enforcement of this division; and
- (b) An accounting of all funds received and used for the administration and enforcement of this division; and
- (c) The estimated rate of illegal sales of tobacco products to minors within the City of San Diego.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the one hundred and eightieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Simon Silva
Deputy City Attorney

SS:jp
04/05/05
Or.Dept:Police
O-2005-65 -DRAFT

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION
45, SECTIONS 33.4501 TO 33.4516, TITLED "PERMITS FOR
TOBACCO PRODUCT SALES," RELATING TO
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT
SALES

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation and, if such use is curtailed, then minors are likely not to use tobacco at all; and

WHEREAS, minors, who use tobacco products, face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code section 22956) and provides procedures for onsite sting inspection of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a recent survey by the American Lung Association of San Diego and

~~Imperial Counties carried out in San Diego County showed that as many as 43.9 percent of 244~~

stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting sales of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and finally, and most-importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California Courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, which created a state licensing program for the sale of tobacco products, permits local governments to create their own ordinances to discourage violations of the law; and

WHEREAS, the City Council of the City of San Diego finds and declares that the purpose of the ordinance is:

- (1) to discourage violations of law which prohibit or discourage sale or distribution of tobacco products to minors; and
- (2) to protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is

~~hereby amended by adding Division 45, Sections 33.4501 through 33.4516, titled~~

"Permits for Tobacco Product Sales," to read as follows:

§33.4501 Definitions

Except as otherwise provided, for the purpose of this division:

"*Person*" has the same meaning as used in Section 11.0210.

"*Police permit*" has the same meaning as used in Municipal Code section 33.0201. For purposes of this Division, the City Treasurer may endorse a business tax certificate issued by the City Treasurer with "Tobacco Retailer Endorsement" to indicate that a police permit for has been issued to operate as a tobacco retailer.

"*Tobacco products*" means any substance containing tobacco leaf, including but not limited to cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia.

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

(a) ~~It is unlawful for any person to operate as a tobacco retailer~~

without a police permit.

- (b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a police permit to operate as a *tobacco retailer* at that location. This section does not apply to sales or exchanges not made to the public.
- (c) A *tobacco retailer* must obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.
- (d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* at any location other than a fixed location.

Responsibilities

- (a) It is the intent of this division that the responsibilities of administration and enforcement be divided between the Police Department and the Treasurer, respectively. The Police Department shall be responsible for determining the *fitness* of applicants for a *police permit* to operate as a *tobacco retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division. The Treasurer is responsible for accepting applications, subject to approval from the Chief of Police, for a police permit to operate as a *tobacco retailer* and, subject to approval from the Chief of Police, for issuing the permit by endorsing the applicant's

business tax certificate to indicate that a *police permit* to operate as
~~a tobacco retailer has been issued.~~

- (b) The City Treasurer may accept an application to operate as a *tobacco retailer* and, subject to approval from the Chief of Police, endorse a *tobacco retailer's* business tax certificate with "*Tobacco Retailer Endorsement*," indicating a *police permit* to operate as a *tobacco retailer* has been issued.
- (c) Any information provided to or gathered by the City Treasurer under this Division shall also be shared with and made available to the *Chief of Police*.

§33.4504 Tobacco Retailer Permit Application Contents

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
 - (1) The full true name and any other names used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) The address of the proposed *tobacco retailer* business location.
 - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
 - (5) All fictitious business names used by applicant and the respective addresses of those businesses.

(6) Written proof that the applicant is at least eighteen years of age and a valid social security number.

(7) Applicant's height, weight, color of eyes, and hair.

(8) Photographs of the applicant as specified by the *Chief of Police*.

(9) Applicant's business, occupation, and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.

(10) Whether the applicant has ever had any license or permit issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any professional or vocational license or permit revoked or suspended within five years immediately preceding the application, and the reason for the suspension or revocation.

(11) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.

(12) The name and address of the owner and lessor of the real property upon which the business is to be conducted, and a copy of the lease or rental agreement.

(13) All business tax certificates.

- (14) Information regarding licenses required under the

~~"Cigarette and Tobacco Products Licensing Act of 2003,"~~

found in Business and Professions Code sections 22970, et seq, including, but not limited to, copies of applications for, licenses issued, and any documentation regarding the reasons for the denial of such license.

- (15) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

- (b) In addition to the information required by Municipal Code section 33.4503(a), an applicant as a *tobacco retailer* must furnish the following information to the City Treasurer:

- (1) if the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
- (2) if the applicant is a partnership, the name and residential addresses of each of the partners, including limited partners;

(3) if the applicant is a limited partnership, a copy of the

~~limited partnership's certificate of limited partnership as~~

filed with the County Clerk;

(4) if one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Municipal Code section 33.4503(a);

(5) if the applicant is a corporation or partnership, the name of the responsible managing officer.

(c) An applicant for a *police permit* to operate as a *tobacco retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in Municipal Code section 33.4507(c)(1). It shall be unlawful to submit a false, untruthful, or misleading declaration.

§33.4505 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a business operating as a *tobacco retailer* is deemed an applicant and each must provide the information required in Municipal Code section 33.4503.

§33.4506 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

§33.4507 **Proof of State Licenses, Permits, and Certifications Required Before
Issuance of Tobacco Retailer Business**

In addition to the requirements of Municipal Code section 33.4503, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer all state licenses, permits, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location where the applicant will operate as a *tobacco retailer*.

§33.4508 **Permit Issuance and Grounds for Denial Of Permit To Operate As a
Tobacco Retailer**

- (a) The *Chief of Police* shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*.

The *Chief of Police* shall have authority to determine whether or not to grant a *police permit* or take administrative action against a *police permit* under this division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.
- (c) In addition to the grounds for denial stated in Municipal Code section 33.0306(a)-(f) an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons:

The applicant has within five years immediately preceding the date
~~of the filing of the application been convicted of, suffered any civil~~

penalty, or faced administrative action against any type of license for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. ("Stop Tobacco Access to Kids Enforcement Act or the STAKE Act"), Business and Professions Code sections 22970, et seq. ("Cigarette and Tobacco Products Licensing Act of 2003") or a charge of violating a lesser included or lesser related offense, including but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

§33.4509 Right to Appeal Denial of Permit To Operate As A Tobacco Retailer.

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

§33.4510 Permit Fees

- (a) It is the intent that all costs associated with all aspects of this division, including but not limited to, investigating permit applications, processing permit applications, inspecting, regulating, and enforcing this division, and providing for appeals, shall be borne by applicants and permittees. To this end, the City Manager may assess a fee for a *police permit* to operate as a

tobacco retailer according to the schedule set in the City Clerk's

~~Composite Rate Book.~~

- (b) A permit issued under this division shall be valid solely for a period of one year from the date of issuance.

§33.4511 Tobacco Retailer Permit Operating Requirements

- (a) *A tobacco retailer* must keep and post his or her *police permit*, issued under this division, in the manner prescribed in Municipal Code sections 33.0105(a) and (c). This section is regulatory only.
- (b) *Persons* who possess a *police permit* to operate as a *tobacco retailer* shall not allow or permit, at any location for which they have a *police permit* to operate as a *tobacco retailer*, a violation of any tobacco control law, including but not limited to, the offenses listed in Municipal Code section 33.4507(c)(1). Given the need to protect the health and welfare of minors and the public, it is the intent of this section to hold the *tobacco retailer* responsible for the acts of others who violate *tobacco* control laws at locations for which the *tobacco retailer* possesses a *police permit* to operate as a *tobacco retailer*. This section is regulatory only.
- (c) *A tobacco retailer* must display in a conspicuous and prominent location near *tobacco* products, information, in a manner set by the San Diego Police Department, on how to report violations of *tobacco* control laws, including, but not limited to reporting sales

Department:

§33.4512 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this division is suspended or revoked, the permittee must post, consistent with section 33.4509, written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer* endorsement.
- (c) To insure compliance with this Division, the *Chief of Police* shall be required to inspect at least 20 percent of *tobacco retailers* per year.

§33.4513 Tobacco Retailer Police Permit Not Transferable

A *police permit* issued under this division is not transferable.

§33.4514 Grandfather Clause

Convictions for offenses listed in Section 33.4507(c)(1) shall not be used to deny an application for a *police permit* under this division if the date of the conviction was prior to the passage of this division.

§33.4515 Sunset Clause

This division shall be repealed five years from and after the passage of this division, unless this section is repealed.

The San Diego Police Department shall, on a yearly basis or as requested

by the Public Safety and Neighborhood Services Committee, report to the Public Safety and Neighborhood Services Committee the following information:

- (a) A summary of activity related to the administration and enforcement of this division; and
- (b) An accounting of all funds received and used for the administration and enforcement of this division; and
- (c) The estimated rate of illegal sales of tobacco products to minors within the City of San Diego.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the one hundred and eightieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

Simon Silva
Deputy City Attorney

SS:jp

04/08/05

Or.Dept:Police

O-2005-65 -DRAFT-Version B